

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Status of Claims:

No claims are currently being cancelled.

Claims 1 and 14 are currently being amended.

Claims 15-18 are currently being added.

This amendment and reply amends and adds claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending and adding the claims as set forth above, claims 1-18 are now pending in this application, whereby claims 2-13 have been withdrawn from consideration.

Claim Rejections – Prior Art:

In the Office Action, claims 1 and 2 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen and Chen (“The Optimal Penetration Pricing Strategy . . .”); and claim 14 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen and Chen in view of U.S. Patent Publication No. 2001/0014868 to Herz et al. These rejections are traversed with respect to presently pending claims 1, 2 and 14, for at least the reasons given below.

In its rejection of claim 1, the Office Action refers to Table 2 on page 147 of Chen and Chen, and asserts that Table 2 shows changing the price at different time periods which effects the demand of a product. The Office Action correctly recognizes that Chen and Chen does not explicitly teach raising and lowering the price at different time intervals, but incorrectly asserts that it would have been obvious to do so since “one could determine if the increase in demand would make up for the lowered price such that profits would increase.” The Office Action goes on to assert that “Lowering and Raising the price in Chen and Chen would produce more accurate calculations of change in demand thereby increasing or decreasing profits.”

From the above assertions in the Office Action, it is clear that the Examiner is improperly performing hindsight reconstruction of the claimed invention, by utilizing the teachings in the specification against the presently pending claims.

First and foremost, Chen and Chen describes a scheme whereby a price is changed in either an up direction or a down direction at successive points in time, whereby there is no disclosure or suggestion in Chen and Chen of both raising and lowering a price at each point in time. To assert otherwise would be to read things into Chen and Chen that are just not there.

The Office Action's asserted arguments as to why it would be useful to provide both a one-step price increase and a one-step price decrease for each time interval are based totally on the teachings of the present invention, and would not have been done by one skilled in the art who has only Chen and Chen to base his/her decisions on. The Office Action does not provide any basis, beyond mere bold assertions, as to why providing both lowering and raising of prices in Chen and Chen would produce more accurate calculations of change in demand. Rather, it would merely provide a quicker way to compute increased or decreased profits, whereby Chen and Chen does not even hint at doing its analysis in such a way.

Accordingly, presently pending claims 1 and 2 are patentable over Chen and Chen.

Furthermore, with respect to the rejection of claim 14 based in part of the teachings of Herz, it is respectfully submitted that Herz does not teach or suggest the features recited in claim 14. In more detail, claim 14 recites the following steps:

providing a first set of web users with marketing over the Internet at the first price that is one step size higher than the optimal price estimate at that time, and wherein

providing a second set of web users with marketing over the Internet at the second price that is one step size lower than the optimal price estimate at that time,

wherein no web user is in both the first set of web users and the second set of web users.

The Office Action asserts that paragraph 0037 of Herz teaches that on-line or off-line product offers are customized to different customers in an attempt to maximize a vendor's profits. Applicant respectfully disagrees, with respect to the specific features recited in claim 14. In more detail, paragraph 0037 of Herz describes a method that counts what fraction of shoppers who are presented with an offer choose to accept that offer, and whereby shopper

profiles are determined, in order to determine a shopper's likelihood of accepting a given offer, so as to compute an expected profit. This paragraph of Herz says nothing about providing a first set of web users with marketing at a first price and providing a second set of users with marketing at a second price.

Accordingly, claim 14 is patentable for these additional reasons, beyond the reasons given above for its base claim 1.

New Claims:

New claims 15-17 have been added to recite additional features of the present invention that are believed to provide an additional basis of patentability for those claims. For example, new claim 17 recites features described on page 10 of the specification, whereby such features are not taught or suggested by the cited art of record, when taken as a whole. Also, new claim 18 recites a successively decreasing time interval, as described, for example, in Figure 2 of the drawings. Such features are not taught or suggested by the cited art of record, when taken as a whole.

Conclusion:

Since all of the issues raised in the Office Action have been addressed in this Amendment and Reply, Applicants believe that the present application is now in condition for allowance, and an early indication of allowance is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date December 18, 2006

By Phillip J. Articola

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 945-6014
Facsimile: (202) 672-5399

George C. Beck
Registration No. 38,072

Phillip J. Articola
Registration No. 38,819